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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,296	01/02/2002	Adrian Kawa	10047	8420

7590 11/14/2005

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EXAMINER
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KUHNS, SARAH LOUISE

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/038,296

Applicant(s)

KAWA ET AL.

Examiner

Sarah L. Kuhns

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3, 5-12 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-12 and 14-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

Claims 1-3, 6-12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nageo et al., Jap. Pat. No. 7059553, in view of Matsuura et al., Jap. Pat. No. 10262641 and "How to Homebrew Sake" ("Homebrew").

In regard to claims 1, 2, 6-12 and 15, Nageo discloses a method comprising providing a quantity of sake, which would be expected to have the alcohol content claimed, contacting the quantity of sake with a quantity of finely divided fruit to form a produce sake mixture (see Example 2 of machine translation, white peach pulp and plum pulp are used and the Examiner interprets pulp to be "finely divided fruit"), and subjecting the raw flavored sake to a rapid pasteurization process to produce pasteurized flavored sake.

Nageo does not disclose aging the produce sake or separating the aged produce sake mixture into a raw flavored sake and insoluble material. Matsuura teaches the production of a flavored sweet sake whereby the herbs, spices and fruit are immersed in a sweet sake and then aged for 7 to 30 days at 5-50°C and then the insoluble material is removed. It would have been obvious to extend this teaching to the process of Nageo, since it also relates to a rice wine product, in order to ensure the flavor of the

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fruit fully develops in the sake while at the same time providing a final beverage that is pulp-free.

Nageo does not disclose the addition of a preservative to sake. Homebrew discloses a brewing procedure for sake, which includes adding citric acid for the purpose of preventing contamination by bacteria (see page 2, step 4). Therefore, it would have been obvious to add a preservative to the sake of Nageo for the same purpose of preventing contamination by bacteria.

In regard to claims 3 and 16, the Examiner interprets the rapid pasteurization of Nageo to be flash pasteurization.

Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nageo, in view of Matsuura and Homebrew, as applied above, in further view of WineMaker. Nageo does not disclose the addition of a preservative to the sake. However, as discussed above, Homebrew discloses a brewing procedure for sake, which includes adding citric acid for the purpose of preventing contamination by bacteria (see page 2, step 4). WineMaker discloses that it was notoriously well known to use sulfites in wine products as preservatives (see page 3). As such, a sulfite would have been an obvious alternative to the citric acid taught by Homebrew and therefore, it would have been obvious to add a sulfite to the sake of Nageo for the same purpose of preventing contamination by bacteria.

### ***Response to Arguments***

Applicant's arguments, with respect to the 35 U.S.C. 112 rejections have been fully considered and are persuasive. These rejections of the claims have been withdrawn.

Applicant's other arguments filed February 7, 2005, have been fully considered but they are not persuasive.

Applicant argues that Matsuura is directed towards mirin, which does not have the required alcohol content. However, the Examiner now relies on Nageo as the primary teaching, and it teaches this limitation. Matsuura is relied on to teach the steps of aging and removal of insoluble material. It is analogous art because it is also directed to a rice wine product being flavored with fruit components. Therefore, the combination is proper.

Applicant also argues that Nageo does not disclose finely divided fruit. However, as discussed above, Nageo does teach the use of pulp, which the Examiner interprets to be finely divided pulp.

Applicant argues that the references do not teach the addition of a preservative to sake. Homebrew and WineMaker have been applied above to address this limitation.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-

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1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached at 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK

11-10-05

*H. Pratt*  
HELEN PRATT  
PRIMARY EXAMINER